



POLICE DEPARTMENT

February 16, 2010

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Jose Ramos
Tax Registry No. 931007
48 Precinct
Disciplinary Case No. 84292/08

Police Officer Patrick Sullivan
Tax Registry No. 931282
48 Precinct
Disciplinary Case No. 84293/08

The above-named members of the Department appeared before me on December 3, 2009, charged with the following:

Disciplinary Case No. 84292/08

1. Said Police Officer Jose Ramos, assigned to the 48th Precinct, while on duty at or about 2200 hours on January 26, 2007, in the vicinity of East Tremont and Arthur Avenue, Bronx County, abused his authority as a member of the New York City Police Department, to wit: said Police Officer did search the car of an individual known to this Department without sufficient authority to do so.

P.G. 203-10, Page 1, Paragraph 4 – ABUSE OF AUTHORITY

2. Said Police Officer Jose Ramos, assigned to the 48th Precinct, while on duty, on January 26, 2007, failed to properly maintain his activity log. (*As amended*)

P.G. 212-08, Page 1, Paragraph 1 C (2) ACTIVITY LOGS

Disciplinary Case No. 84293/08

1. Said Police Officer Patrick Sullivan, assigned to the 48th Precinct, while on duty at or about 2200 hours on January 26, 2007, in the vicinity of East Tremont and

Arthur Avenue, Bronx County, abused his authority as a member of the New York City Police Department, to wit: said Police Officer did frisk an individual known to this Department without sufficient authority to do so.

P.G. 203-10, Page 1, Paragraph 4 – ABUSE OF AUTHORITY

2. Said Police Officer Patrick Sullivan, assigned as indicated in Specification # 1, at the time, date and location indicated in Specification # 1, abused his authority as a member of the New York City Police Department, to wit: said Police Officer did search an individual known to this Department without sufficient authority to do so.

P.G. 203-10, Page 1, Paragraph 4 ABUSE OF AUTHORITY

3. Said Police Officer Patrick Sullivan, assigned as indicated in Specification # 1, at the time, date, and location indicated in Specification # 1, failed to provide his name and/or shield number when requested by an individual known to this Department.

P.G. 203-09, Page 1, Paragraph 1 PUBLIC CONTACT - GENERAL

4. Said Police Officer Patrick Sullivan, assigned as indicated in Specification # 1, at the time, date, and location indicated in Specification # 1, failed to prepare a Stop, Question and Frisk report (UF-250).

P.G. 212-11, Page 1, Paragraph 6 STOP AND FRISK

5. Said Police Officer Patrick Sullivan, assigned to the 48th Precinct, while on duty, on January 26, 2007, failed to properly maintain his activity log. (*As amended*)

P.G. 212-08, Page 1, Paragraph 1 C (2) – ACTIVITY LOGS

The Department was represented by Nancy Lichtenstein, Esq., Department Advocate's Office, and the Respondents were represented by John Tynan, Esq. The Respondents, through their counsel, entered pleas of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondents are found Not Guilty.

The Department's Case

The Department called James Duerr as a witness and, through him, offered the tape recorded statement of [REDACTED].

James Duerr

James Duerr, who has been employed by the Civilian Complaint Review Board (CCRB) since 2003 and presently serves as supervisor of investigations, testified that

[REDACTED] filed a complaint with CCRB in which he alleged that his car had been improperly stopped by police officers and that his person and his vehicle had been illegally searched. [REDACTED]'s complaint was assigned to Investigator Christopher Vredenburgh.

On February 9, 2007, [REDACTED] came to CCRB and Vredenburgh conducted a tape-recorded interview of [REDACTED] [Department exhibit (DX) 3]. Vredenburgh photo copied [REDACTED] s New York State driver's license (DX 4) [which indicates that [REDACTED] s date of birth is [REDACTED] and that his address is [REDACTED]].

Although Vredenburgh is no longer employed by CCRB, Duerr testified that Vredenburgh identified himself on the audio tape as he commenced his interview of [REDACTED].

Statement of [REDACTED]

[REDACTED] stated that on January 26, 2007, at about 10:00 p.m. in the vicinity of East Tremont Avenue and Arthur Avenue, the Bronx, his left his residence to drive to sister's house. As he was walking toward his car, he noticed a black car parked behind him. He

saw someone inside the black car lower a window and “like they caught a glance of me.” He got into his car, started driving and made a left turn to go towards East Tremont. As soon as he made this turn the black car started following him. He drove two or three blocks and heard sirens and saw lights behind him. He pulled over and stopped his car and “three white guys,” one of whom was “Hispanic,” got out of the black car, approached his vehicle and knocked on his window.

They asked to see his “driver’s license and registration” so he gave “it” to him. He asked them why they had stopped him but they did not respond. They asked him where he was going. He told them he was going to his sister’s house. He was told that he had not shown them any “papers” regarding the car he was driving so he told them ‘let me look for it’ and he started looking for “it.” He could not find “it,” so he told them that he was going to call his mother “to see if she knew where it was at.” He was told, “Don’t worry about it. Just get out of the car.” He responded, “Like alright.” He got out of the car. He was “pulled to the side” of the car and he was asked if he had any weapons on him “and things like that.” He answered, “No.”

One officer then “started searching me.” [REDACTED] stated that “from my understanding you know he’s not supposed to go into my pockets without my consent. He started taking items out of my pockets and he basically went through all the pockets in my coat, he had my coat wide open.” [REDACTED] saw that “the other guy he was like inside the car, like looking with the flashlight. He sat down in the driver’s seat” and “was looking through like the inside with a flashlight, and he was looking through the door, you know the door panel, the bottom, he searched. After that he had me outside for like fifteen minutes with my coat wide open, it’s freezing outside and you know I asked him,

what's going on? He didn't respond." [REDACTED] stated that after he was searched, he was told, "Alright. You're good to go. Have a good night." [REDACTED] asked this officer, "Why did you stop me?" He said, "There have been robberies around the neighborhood."

[REDACTED] recalled thinking "that has nothing to do with me driving" and he concluded that they were "messing around with me." So he "asked him for his badge number" as he was walking towards his car. When [REDACTED] asked him again, "He just blurted out '423.'" [REDACTED] asked him, "Can I get your precinct number?" But he and the other two officers "just got in the car, they all got in the car." So [REDACTED] "got in front of the car," a Chevrolet Impala, and "took down the license plate number." He recalled that the plate number was [REDACTED]. He then called CCRB.

[REDACTED] was asked, "When he asked you to get out of the car and started searching you, did he ask you if he could search you?" He answered, "No. He just said put your hands up, so he just went through my pockets. I was like, I told him I was out of consent for his search, you're doing an illegal act. I don't consent for your search 'cause as soon as I looked at the other guy, I remember what my teacher told me. My teacher told me like if they don't ask for your permission, they don't have a warrant, they can't really go into the car or nothing like that. So I told him, I was like, you're performing an illegal act and he just looked at me and he smiled and he just kept searching me."

[REDACTED] stated that "one of them you know he kind of like leaned in the car and took a flashlight, he started looking through the car. Then he kind of like sat down in the driver's seat, he was just with the flashlight moving paper around that I had in the car. Then he came out and he started moving like, 'cause my mother's got bottles and stuff in

like the panel, the door panel, he started moving that around like he took a couple of them out, and he put them back, and checking my shit I guess."

[REDACTED] provided descriptions of the three officers. When [REDACTED] was asked whether he had ever seen these officers prior to January 26, 2007, he stated that he had not seen them before that date but that he had seen their car after that date.

Duerr further testified that CCRB's file shows that Investigator Vredenburgh determined that the license plate number that [REDACTED] provided to CCRB [REDACTED] did not exist. However, Vredenburgh determined that the unmarked black Chevrolet Impala which is used by officers assigned to anti-crime duties at the 48 Precinct bears license plate number [REDACTED]. Vredenburgh also determined that on January 26, 2007, at 10:00 p.m., this car was assigned to an on duty three person anti-crime team consisting of Sergeant Bracken and Respondents Sullivan and Ramos. Vredenburgh obtained photographs of Sergeant Bracken and Respondents Sullivan and Ramos.

Duerr testified that on June 19, 2007, Vredenburgh showed [REDACTED] photos in compliance with CCRB's "loose guidelines" regarding how photographic identifications should be conducted. CCRB's file indicates that Vredenburgh obtained 18 filler photos of male police officers and that he divided these 18 photos into three sets of six photos each. Vredenburgh then placed a photo of Sergeant Bracken with one set of six photos; a photo of Respondent Ramos with a second set of six photos; and a photo of Respondent Sullivan with the third set of six photos.

[REDACTED] was shown each of the three sets of seven photos. [REDACTED] did not identify any of the photos in the set which included Sergeant Bracken's photo. When

[REDACTED] was shown the set of photos which included Respondent Ramos' photo, he stated that he "recognized" Respondent Ramos' face but that he could not positively identify him as one of the officers who had stopped him. When [REDACTED] was shown the set of seven photos which included Respondent Sullivan's photo, he positively identified Respondent Sullivan's photo as the officer who was driving the unmarked car that had stopped him and as the officer who had searched him and his car.

When the photo showing was concluded, Vredenburgh did not keep the three separate sets of photos intact nor did he document which of the 18 filler photos had been part of the set that included Respondent Sullivan's photo. As a result, Duerr testified that he could not be sure which of the 18 filler photos in the CCRB file had been placed in the set of seven photos which had included Respondent Sullivan's photo.

Respondent Sullivan was directed to appear at CCRB. At this interview, Respondent Sullivan stated that he and Respondent Ramos had the 48 Precinct Anti-Crime Unit's only unmarked car from 1600 hours to 0035 hours on January 26, 2007.

The Respondent's Case

The Respondents testified on their own behalf.

Respondent Sullivan

Respondent Sullivan referred to his activity log (DX 1), as past recollection recorded, to testify that he and Sergeant Bracken and Respondent Ramos performed no car stops during their tours of duty on January 26, 2007, which commenced at 1600 hours and ended at 0035 hours. He estimated that he has made over 150 arrests while he has

been assigned to anti-crime duties for the past three years. During the four year period immediately prior to being assigned to anti-crime duties, he performed patrol duties within the 48 Precinct. He recalled that he has made arrests on Hughes Avenue and in the vicinity of Hughes Avenue.

Respondent Ramos

Respondent Ramos testified that he has no present recollection regarding his tour of duty on January 26, 2007, which commenced at 1600 hours and ended at 0035 hours, and that his only record of what occurred during this tour is the entry he made in his activity log (DX 2).

FINDINGS & ANALYSIS

It is charged that Respondent Sullivan abused his authority by frisking and searching [REDACTED]; that he failed to provide his name and/or shield number to [REDACTED]; that he failed to prepare a Stop, Question and Frisk report (UF-250); that he and Respondent Ramos abused their authority by searching [REDACTED]'s car; and that they each failed to record that they had an interaction with [REDACTED] in their respective activity logs.

The Respondents have both consistently denied that they stopped any cars or that they had any interaction with [REDACTED] during their tour of duty on January 26, 2007. Their activity logs contain no entries that they conducted any vehicle stops during their 1600 hours to 0035 hours tours of duty on January 26, 2007 (DX 1 & 2).

The Assistant Department Advocate (the Advocate) argued that it is hard to believe that the Respondents made no stops at all during their tour of duty on January 26,

2007. However, this argument is unsupported by any evidence in the record because the Advocate offered no data regarding the number of stops that the Respondents had made during similar recent tours or regarding the number of stops that 48 Precinct anti-crime officers normally make during similar tours.

The only evidence offered by the Department to prove that the Respondents engaged in the charged misconduct consisted of [REDACTED]'s statement to CCRB, which was offered as hearsay evidence at this trial, and Duerr's testimony regarding [REDACTED]'s positive identification of Respondent Sullivan's photo. I will analyze this evidence separately.

Duerr's testimony regarding [REDACTED]'s positive identification of Respondent Sullivan's photo

Duerr testified that after Vredenburgh had shown sets of photos to [REDACTED] Vredenburgh did not keep the set of seven photos that included Respondent Sullivan's photo intact nor did he document which six of the 18 filler photos had been part of the set that included Respondent Sullivan's photo. Thus, Duerr conceded that he could not be sure which six of the 18 filler photos contained in the CCRB file were shown to [REDACTED] together with Respondent Sullivan's photo.

Based on Duerr's testimony, it is clear that under the CCRB's "loose guidelines" for conducting photographic identifications, Vredenburgh did not properly preserve or document the photo showing he conducted. This is significant because an in-court review of the 18 filler photos Vredenburgh used indicated that the facial characteristics of some of the faces depicted in the 18 filler photos are not at all similar to Respondent

Sullivan's facial appearance. If it was these dissimilar looking photos that were included in the photo set that was shown to [REDACTED] that contained the photo of Respondent Sullivan, this photo set may well have been unduly suggestive.

Also, even if I were to find that [REDACTED] photo ID of Respondent Sullivan was not tainted but constituted a reliable, non-corporeal identification, this photo ID (even when combined with the fact that [REDACTED] provided a close-to-accurate plate number of the Department vehicle used by Respondent Sullivan) would only establish that [REDACTED] had observed Respondent Sullivan driving what [REDACTED] recognized to be an unmarked Department vehicle. [REDACTED]'s photo ID does not corroborate [REDACTED]'s claim that his car was stopped by Respondent Sullivan or that Respondent Sullivan searched him and his car. As a result, I find that [REDACTED]'s photo ID of Respondent Sullivan has little, if any, evidentiary value.

[REDACTED] s hearsay statement

Appellate decisions have consistently held that although hearsay is admissible in administrative proceedings and although a disciplinary finding may rest upon uncorroborated hearsay alone, hearsay declarations are insufficient to support findings of guilt in cases that pose close questions of credibility¹ and that the more central the hearsay is to the agency's case the more serious the question of basic fairness, and the more critical the question of reliability, may become.²

¹ People Ex. Rel Vega v. Smith, 66 N.Y.2d 130 (1982); Eppler v. Van Alstyne, 93 A.D.2d 930 (3rd Dep't. 1983).

² Calhoun v. Bailar, 626 F. 2d 145 (9th Cir. 1980), cert. denied, 452 U.S. 906 (1981).

Here, Santana's failure to appear made it impossible to observe his testimonial demeanor. Also, since Duerr was not present when Vredenburgh interviewed [REDACTED] or when he showed him photos, the Department called no witness who has ever even seen [REDACTED]. [REDACTED]'s absence also made it impossible to assess his credibility after his version of this event had been tested by cross-examination. This is important because [REDACTED] made a number of statements at his CCRB interview that were fodder for cross-examination.

Whether [REDACTED] has ever personally engaged in criminal activity would have been a proper subject for cross-examination. Thus, his statement that as he was walking to his car he immediately recognized an unmarked black car parked nearby as a police vehicle was fodder for cross-examination because he did not explain (and he was not asked) how he had learned to become so attuned to the presence of plainclothes officers inside an unmarked surveillance vehicle.

With regard to the possibility that [REDACTED] has criminal associations, he stated that he had filed his complaint with CCRB alleging that he had been illegally stopped and searched because his "teacher" had told him in detail what police officers were not permitted to do without his consent. [REDACTED] was not asked to explain who this "teacher" was, what their relationship was or how the "teacher" came to know so much about the law of search and seizure.

[REDACTED]'s failure to testify also prevented Respondent's counsel from having the chance to explore possible motives he may have had for inventing these allegations, such as whether [REDACTED] has an anti-police bias. In this regard, I find it significant that the Respondents have made arrests on [REDACTED] Avenue, the street where [REDACTED] resides (DX

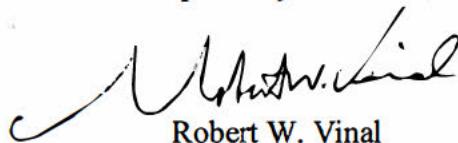
4). At his CCRB interview, [REDACTED] was only asked whether he had ever seen the officers before. He was not asked whether he, a relative or a friend had had any negative interactions with anti-crime officers assigned to the 48 Precinct or whether he himself had ever been harassed by or arrested by anti-crime officers assigned to the 48 Precinct.

[REDACTED]'s voluntary decision to absent himself from these proceedings and his failure to appear to testify in support of the allegations he made to CCRB raises the suspicion that he did not want to be questioned about the truthfulness of his accusations.

Absent the testimony of [REDACTED] the Department had only uncorroborated hearsay (the audio tape of his CCRB interview) to offer as evidence. Since the Respondents denied that they had any interaction with [REDACTED], a close question of credibility exists between [REDACTED]'s claims and the complete denials proffered by the Respondents. Thus, the uncorroborated hearsay statement of [REDACTED] constitutes insufficient evidence for the Department to meet its burden of proving these charges by a preponderance of the credible evidence.

It is recommended that the Respondents be found Not Guilty.

Respectfully submitted,



Robert W. Vinal
Assistant Deputy Commissioner - Trials

APPROVED
JUN 01 2010
RAYMOND W. KELLY
POLICE COMMISSIONER

